

STEPHEN H. WARREN (S.B. #136895)  
DAVID P. ENZMINGER (S.B. #137065)  
REUBEN D. WILSON (S.B. #212563)  
DIANA ROMAN SHAW (S.B. #252606)  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407

Counsel to PAYMENTONE CORPORATION

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

In re

OLD T.B.R., INCORPORATED. f/k/a  
THE BILLING RESOURCE, dba  
Integretel, a California corporation,

Debtor.

Tax ID: 33-0289863

The Billing Resource, LLC (New T.B.R.)

Plaintiff,

v.

Old T.B.R., Incorporated f/k/a The Billing  
Resource, Inc., dba Integretel, Payment  
One and Joseph Lynam

Defendants,

Old T.B.R., Incorporated f/k/a The Billing  
Resource, Inc., Plaintiff,

v.

The Billing Resource, LLC (New T.B.R.)

Defendants,

Case No. 07-52890

Adversary Proceeding Case No. 09-05077

Adversary Proceeding Case No. 09-05074

Chapter 11

**Joint Status Conference Statement of  
PaymentOne Corporation and Old  
T.B.R., Inc.**

Date: July 17, 2009

Time: 3:00 p.m.

Place: United States Bankruptcy  
Court

280 South First Street  
San Jose, California

Judge: Hon. Arthur S. Weissbrodt

Courtroom: 3020

1  
2 **I. INTRODUCTION**

3 On June 19, 2009, New TBR filed application for a Temporary Restraining  
4 Order in Adversary Proceeding No. 09-05077. PaymentOne and Old TBR filed  
5 oppositions to the application. New TBR filed a reply on June 30, 2009. The matter  
6 came on for hearing in this Court on July 2, 2009, in which the Court held that the relief  
7 could not be granted, among other reasons, because there was no adversary complaint on  
8 file requesting the relief. The Court ordered New TBR was to file an adversary  
9 complaint or amended complaint, if it desired, by July 9, 2009, containing a plea for the  
10 relief it seeks. The parties were directed to confer about the complaint and file a joint  
11 status conference report on July 14. Following that, the Court set a scheduling conference  
12 for July 17, 2009. Further, to preserve the dispute in the meantime, the Court asked the  
13 parties to agree that P1 would continue to provide 800 number and call center services to  
14 New TBR, provided that New TBR paid the \$8,000.00 monthly for the service to  
15 continue. Both New TBR and P1 consented to this interim proposal. And finally, the  
16 Court confirmed that the parties' March 23, 2009 stipulation remains in effect until such  
17 time as New TBR shows good cause to be excused from the stipulation. See Docket  
18 Entry, July 3, 2009.

19 The Court further ordered that the status conference in Adversary  
20 Proceeding 09-05074, then set for July 15, 2009, be continued to July 17, at 3:00 p.m. to  
21 be considered at the same time as the status conference in Adversary Proceeding 09-  
22 05077.

23 New TBR did not file an adversary complaint or amended complaint as  
24 directed. Nor did New TBR pay P1 the \$8,000.00 provided in the stipulated interim  
25 agreement. Pursuant to the Court's order, P1 and Old T.B.R. set out their joint position  
26 below. New T.B.R.'s counsel has not communicated with P1 or Old TBR since the July  
27 2, 2009 hearing, and did not respond to P1's request for its position concerning this status  
28 conference.

1  
2 **II. STATUS CONFERENCE POSITION OF P1 AND OLD TBR.**

3 No request for injunctive relief is currently pending for which the parties  
4 can discuss a briefing schedule. Since New TBR opted not to file a complaint or an  
5 amended complaint seeking injunctive relief and has not paid P1 the \$8,000 ordered by  
6 the court to P1 to maintain the #800 number service, P1 believes New TBR has  
7 abandoned its request for injunctive relief. As the Court noted during the July 2, hearing,  
8 no injunctive relief may be entered without a complaint seeking such relief.<sup>1</sup>

9 New TBR's abandonment of its request for injunction and failure to pay the  
10 interim rate for service effectively terminates P1's obligation to provide call center service  
11 or the use of the toll-free 800 numbers referenced in New TBR's earlier application. At  
12 the July 2, 2009 hearing, the Court persuaded the parties to agree on a short term solution  
13 pending New TBR's filing of an adversary proceeding or amending its complaint to state  
14 a claim for relief by July 9, 2009. But that deadline has passed and New TBR neither  
15 filed the promised papers nor paid the promised interim amount, thus there is no reason  
16 for P1 to continue providing call center service to New TBR or the use of the 800  
17 numbers.

18 Even if New TBR were to suddenly pay the \$8,000 before the status  
19 conference, there is still no reason for P1 to continue providing call center services under  
20 the SSSA. The contractual rights of the parties, including New TBR's payment  
21 obligations, are spelled out in that contract. Certainly this Court did not rewrite the  
22 parties' Shared Support Services Agreement ("SSSA") contract without notice or hearing  
23 such that New TBR is entitled to service indefinitely at a reduced price or without paying  
24

25 <sup>1</sup> Preliminary injunctive relief can only be commenced after an action has been filed. *See Jones v. Horel*, 2009 WL  
26 150960, at \*3 (N.D. Cal. 2009) ("The court will not entertain a motion for a TRO/preliminary injunction unless the  
27 court has first determined that plaintiff has a pleading on file that states a claim for relief."), *see Amer. Nat'l Red*  
28 *Cross v. United Way Calif. Capital Region*, 2007 WL 4522967, at \*11 (E.D. Cal. 2007) ("...a preliminary injunction  
[can]not be granted based on new assertions of mistreatment that [were] entirely different from the claim raised and  
the relief requested in the complaint, even if the new assertions might support additional claims against the same  
defendants.").

1 significant amounts owed simply because it chose *not* to file a complaint. New TBR has  
2 failed to pay for the services provided by P1 under the SSSA, and P1 may cease providing  
3 the service for which New TBR refuses to pay.

4 The second aspect of New TBR's moribund TRO filing on June 19 sought  
5 relief from the stipulated order of March 23, 2009, pursuant to which New TBR was  
6 precluded from taking extraordinary offsets in the amounts owed to P1.<sup>2</sup> This Court  
7 confirmed both at the April 20 hearing and at the July 2, hearing that the Court order  
8 precluding extraordinary offsets remained in effect. But instead of filing a request for  
9 relief from that order as the Court has twice suggested, New TBR has opted simply to  
10 violate the order.

11 On July 8, 2009, New TBR notified P1 that it intended to withhold an  
12 additional \$55,000 weekly in the payments owed P1, in part, as a reserve for the "Biz to  
13 Biz" in an undetermined amount. See Attachment A (Letter dated July 8, 2009, Steve  
14 Cannon to Evan Meyer). This is exactly the offset discussed and prohibited by this Court  
15 on March 23, April 20, and July 2. Given that this Court has clearly prohibited that action  
16 on multiple occasions, P1 requests the Court to issue an Order to Show Cause Regarding  
17 Contempt of the March 23 order to require New TBR to explain, if it can, why its conduct  
18 does not violate the Court's orders.

19  
20  
21 **III. NEW TBR'S POSITION.**

22 New TBR did not respond to P1's requests for its position to include in this  
23 Status Conference Report. P1 and Old TBR do not know if New TBR plans to file a  
24 separate status conference statement.

25  
26  
27  
28 

---

<sup>2</sup> This order was in Adversary Proceeding No. 09-05074.

1 **IV. OLD TBR'S POSITION.**

2 As noted above, Old TBR adopts the position of PaymentOne.

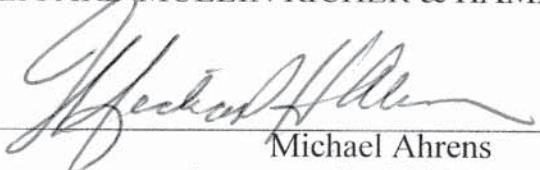
3  
4 Dated: July 14, 2009

Respectfully submitted,

5  
6 O'MELVENY & MYERS LLP

7  
8 By /s/ Stephen H. Warren  
Stephen H. Warren  
9 Attorneys for PaymentOne Corporation

10 SHEPPARD MULLIN RICHES & HAMPTON LLP

11  
12 By   
13 Michael Ahrens  
14 Attorneys for Old TBR, Inc.